

HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,649
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her request for a waiver of the requirement that she cooperate with the Department in attempting to collect child support from the absent parent of one of her children. The issue is whether there is "good cause" for the petitioner's refusal to cooperate within the meaning of the pertinent regulations.

FINDINGS OF FACTS

The petitioner is a young single mother of two children, a daughter, age ten, and a son, age four and a half. Presently the petitioner is enrolled in college and is expecting to receive an associates degree in accounting this June. After that she hopes to find a job and be able to go off welfare.

The father of the petitioner's daughter pays child support, has regular visitation, and is not the subject of these proceedings. The petitioner's son, however, was born after a stormy relationship the petitioner had with another man that lasted less than a year. The petitioner maintains that she and her son would suffer emotional harm if the Department pursues child support from this individual.

The petitioner testified that during her relationship with this man he lied to her several times about affairs he was having and about taking money from her. When the petitioner confronted him about this he would become angry and verbally threatening. On one occasion he grabbed the petitioner's throat during an argument, but stopped when another person came into the room. She testified that he smoked marijuana and indulged in pornographic magazines and "phone sex".

The relationship ended one night when the petitioner had to call the police when he refused to leave after an argument. The next day (March 24, 1988) the petitioner obtained a relief from abuse order that removed him from the house and restrained him from interfering with the petitioner's and her children's personal liberty. The petitioner has not seen him since and believes that he has moved to another town in the state. Her son was born a few months thereafter and has never seen his father. In the five years since he left the father has made no attempt to contact either the petitioner or her son (the father knew the petitioner was pregnant when he left), and the petitioner has heard virtually nothing about his activities, circumstances, and current reputation.

Since that time the petitioner has made a concerted attempt to improve her and her children's situation. The petitioner receives counseling and, as noted above, has taken college courses toward a particular vocational goal. Her

primary fear at this time, however, is that if the Department initiates child support collection the father will attempt to pursue visitation with her son. She maintains that this would be very detrimental to her and her son's emotional well-being because of the risk of having such a believed-to-be-negative influence in their lives. The petitioner testified that although she, herself, would have difficulty dealing with court proceedings regarding visitation, she thought she could "handle" it. She presented no actual evidence, however, that the father would be likely or even inclined to pursue visitation if child support proceedings are initiated against him.

The only corroborative evidence offered by the petitioner is the following statement from her counselor, a case manager/clinician at the local community mental health service:

[Petitioner] is engaged in individual psychotherapy at [county] Mental Health and over the past two years we have addressed her thoughts and feelings around [son's] biological father. When describing the prevalent aspects of his personality, her anxiety level clearly rises and her strong protective feelings for [son] are clearly evident. She is strong in her resolve to prevent any contact with this person who she describes as mentally and physically abusive. She describes much deception and manipulation from him as well. We have explored her fears of the harm that could be done by his coming back into their lives and it is my belief that [son] would not benefit from involvement with this man and could be developmentally harmed by his words and actions. Contact with [petitioner] would also be very detrimental to the progress she has made in her life and the future she plans for her and her family. I strongly recommend that any contact between [son] and this man be prevented.

It does not appear, however, that the petitioner's counselor works with or is personally familiar with the petitioner's son. It also appears that her opinion of the negative impact that contact with the child's father would have on him is based solely on the petitioner's descriptions of what the father was like when he lived with her.

Based on the above, it cannot be found that the initiation of child support collection against the child's father is likely to cause serious emotional harm to either the petitioner or her son. Although contact with the father may not be in the petitioner's or her son's best interest, there is no evidence, or even an allegation, that the initiation of child support collections will lead to anything, but the father attempting to pursue visitation rights through legal court process--and even this must be considered highly speculative, if not dubious, in view of the fact that he has made no attempt whatsoever to contact either the petitioner or her son in over five years.

Even if it could be found, however, that the initiation of child support collection is likely to lead the father to pursue visitation, whether or not it would be detrimental to the petitioner and her children should the father be successful in that effort is a decision that must be entrusted to the family court. There is no evidence that the petitioner lacks the physical or emotional resources to effectively oppose that effort in an appropriate court proceeding, or that

she would not be likely to prevail if the evidence she submits is sufficient. There is also no evidence or allegation that the father would attempt to avoid legal process and harass or make any other inappropriate or illegal contact with either the petitioner or her son, or that, if he did, the petitioner would not be able to avail herself of legal remedies adequate to prevent this.

Based on the evidence presented at this time it simply cannot be concluded that either the petitioner or her son is reasonably likely to suffer serious emotional harm from the initiation of any attempt to collect child support from the child's father. It must also be found that the petitioner has ample legal recourse and protection available to her to prevent the harm she alleges will result if (in the what-must-be-considered-unlikely event) the father attempts to pursue visitation as a result of the initiation of child support collection against him.

ORDER

The Department's decision is affirmed.

REASONS

Any person who receives ANFC automatically assigns his/her rights to support to the Department and is expected as a condition of eligibility to cooperate in establishing paternity and collecting child support benefits unless he/she

has "good cause" for failing to do so. W.A.M. § 2331.32.

"Good cause" is defined in the Department's regulations, in pertinent part, as follows:

To show that cooperation may be "against the best interests of the child" the applicant or recipient must produce some evidence that cooperation in establishing paternity or securing support is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the mother or caretaker relative which is so serious it reduces her ability to care for the child adequately.

Note: Physical or emotional harm must be of a serious nature in order to justify finding of good cause.

W.A.M. § 2331.33

These regulations closely track those found in the federal regulations at 45 C.F.R. § 232.42. As the Board noted in Fair Hearing No. 11,046, a determination of reasonable anticipation of harm is a factual decision which must be made on "a case by case basis on the weight, sufficiency and quality of the gathered evidence. The final decision requires a subjective judgement on the part of hearing examiner."

Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A. 2d 883, 885 (1982). When the criteria for this exception were set by the Department of Health and Human Services, (at that time known as the Department of Health, Education and Welfare), it was expected that it would be an exception used in those few extraordinary circumstances where the parent or

child faced a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support. See 43 Fed. Reg. 2176, (January 16, 1978).

In discussing the evidence necessary to support a request for a waiver W.A.M. § 2331.34(2) includes the following:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the mother or the caretaker relative, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of paternity or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

In this case, although one can easily sympathize with the petitioner's anxiety about legal proceedings that may take place as a result of pursuing child support for her son, on the basis of the evidence presented it must be concluded that the "emotional harm" she alleges will occur is not of the likelihood and severity contemplated by the above regulations.

Based on the evidence presented it must be concluded that the Department's denial of the petitioner's request for a waiver is in accord with the above regulations. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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